

Remarks

Claims 1, 7 and 14 have been amended. Making this rejection ~~final~~ final is improper since a new ground of rejection is set forth, and the finality should be withdrawn. X

The 35 USC 112 Rejection

Claim 7 is rejected under 35 USC 112, first paragraph, as not being supported in the specification. This objection has been overcome by cancellation of "at least" in line 2 thereof.

The 35 USC 103 Rejections

Claim 1, 3-13, 15 and 17-19 are rejected under 35 USC 103(a) as unpatentable over Faita et al. The Examiner admits that the reference fails to teach the claimed "aligned openings", but contends that such would be obvious. Obvious over who teaching? Only Applicant, not any reference, teaches the aligned openings. Thus, here is a pure case of hindsight obviousness having had the advantage of Applicants' disclosure. Such hindsight rejections are not supported under 35 USC 103, as well established by patent case law. Since the reference totally fails to teach or suggest the claimed openings, it fails to support a rejection of these claims under 35 USC 103, and the rejection should be withdrawn.

Claims 14 and 16 are rejected under 35 USC 103(a) as unpatentable over Faita et al in view of Akiyama et al. While the secondary reference teaches flow channels 17, where is there found the features lacking in Faita et al relative to the "aligned openings" of the parent claims as discussed above? Here, neither reference teaches or suggests the features of Claims 14 and 16 which include all the features of their parent claims. Thus, the combination of references fail to support a rejection of these claims under 35 USC 103, and the rejection should be withdrawn.

The 35 USC 102 Rejection

Claims 1 and 3-14 are rejected under 35 USC 102(b) as anticipated by Donelson (WO 98/57384) (a new rejection). Claim 1 sets forth "means for surface sealing a cell...", which feature is not found in this rejection. Note that the Examiner's comments are silent as to this claimed feature. Since this reference fails to teach each feature set forth in these claims, it fails to support a rejection thereof under 35 USC 102, and thus should be withdrawn.

Conclusion

In view of the amendments to the claims and the foregoing comments, it is submitted that each rejection has been overcome.

It is submitted that the making of this Office Action final is premature and improper, and the new rejection was not necessitated by the amendments to, since what was added to parent Claim 1, was previously set forth in the original dependent Claim 2. Thus, withdrawal of the finality is rejected.

It is submitted that this application is in condition for allowance based on Claims 1 and 3-19.

Respectfully submitted,

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